

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILFREDO GONZALEZ-LORA, :
Plaintiff, :
v. : Case No. 3:15-cv-161-KRG-KAP
GEORGE WIGEN, WARDEN, MOSHANNON :
VALLEY CORRECTIONAL CENTER, :
Respondent :

Report and Recommendation

Recommendation

Petitioner Gonzalez-Lora's motion at docket no. 6 styled "Motion to Alter..." has been referred to me under 28 U.S.C. § 636(b)(3). It should be denied.

Report

Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2241(c)(3) sought an order directing the Department of Homeland Security to remove an immigration detainer and an order directing the warden to release him to a half-way house. I recommended that the petition be summarily dismissed, the Court agreed, and the matter is on appeal, petitioner having filed his notice of appeal on the same day as the Rule 59 motion now referred to me.

What petitioner really seeks in the instant motion is not the relief sought in the petition, namely an order lifting the immigration detainer so that petitioner can go to a halfway house. Petitioner faces removal at the end of his term of imprisonment, now scheduled for November 1, 2015, and wants to challenge the order of removal entered in his case. As I remarked before,

petitioner's challenges include his third Petition for Review in the Court of Appeals, at Gonzalez-Lora v. Attorney General, No. 15-1281 (3d Cir.), which has been pending as submitted to a *coram* of Judges Fuentes, Shwartz, and Roth since July 6, 2015, one day before petitioner filed the Rule 59 motion here. If there is any avenue for petitioner to press his arguments about removal, it is in that matter in that court. Because petitioner's instant Rule 59 motion is really aimed at proving that the order of removal is void, and that claim is not properly before this court, the motion should be denied on the merits.

Pursuant to 28 U.S.C. § 636(b)(1), the petitioner is given notice that he has fourteen days to file written objections to this Report and Recommendation.

DATE: 5 October 2015

KEITH A. PESTO
Keith A. Pesto,
United States Magistrate Judge

Notice to counsel of record by ECF and by U.S. Mail to:

Wilfredo Gonzalez-Lora, Reg. No. 42980-083
Moshannon Valley Correctional Center
P.O. Box 2000
Philipsburg, PA 16866